No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ARTHUR GROVES, BOBBY J. EVANS and
LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

REPLY BRIEF FOR THE PETITIONERS

JORDAN ROSSEN
DANIEL W. SHERRICK
8000 East Jefferson
Detroit, Michigan 48214

WILLIAM M. MAZEY
4000 Town-Center
Suite 740
Southfield, Michigan 48075

LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390
Attorneys for Petitioners

GEORGE KAUFMANN
2101 L Street, N.W.
Washington, D.C. 20037
Of Counsel

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 89-1166

ARTHUR GROVES, BOBBY J. EVANS and
LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

I. A. Both Respondent, Ring Screw Works, Ferndale Fastener Division, and the Chamber of Commerce begin by assuming the point to be proved: both take it as a given that in negotiating their collective bargaining agreements the parties here had reached a meeting of the minds—which was then embodied in their contracts—that the use of economic force would be the exclusive means of resolving contract disputes. Thus, Respondent and the Chamber repeatedly characterize the use of economic force as the parties "ultimate recourse" (Res. Br. 7), the "only recourse" (Chamber Br. 3), and the "final means of achieving dispute resolution" (Res. Br. 16); indeed, Respondent states that the Union's determi-

nation not to strike "finaliz[ed manangement's] denial of the grievance" (Res. Br. 6).

The problem is that these assertions are contrary to fact. As the Sixth Circuit held, the collective bargaining agreements here "do[] not expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration." (Pet. App. 8a.) No matter how much the Respondent wishes it were otherwise, these collective bargaining agreements simply do *not* state that where there is a contract dispute, the strike is the Union's "only recourse" or that the Company's denial of the grievance becomes "final" if the Union determines not to strike. Nor is there any background evidence demonstrating that the parties meant the contracts to be so read.

That being so, the collective bargaining agreements here can fairly be interpreted as the Respondent and the Chamber would interpret those contracts if—and *only if*—the law in this regard is (i) that a contract that *permits* economic force and is silent on judicial enforcement embodies an *implied* "exclusivity" provision; and (ii) on the basis of such an interpretive rule, that the parties to such a contract are to be taken to have intended economic force to be the "only recourse" where there is a contract dispute. That, of course, is a conclusory—and, as we demonstrated in our opening brief, an erroneous—way of answering the legal question presented by the *certiorari* petition (Pet. i) which Respondent and the Chamber otherwise so studiously ignore.

B. By assuming away the question presented, Respondent and the Chamber are able to proceed by arguing that Respondent should prevail on the theory that where a collective bargaining agreement *does* establish an *exclusive* non-judicial mechanism for resolving contract disputes, the parties will normally be required to resolve such disputes through that exclusive procedure. Thus, Respondent characterizes the present suit as an attempt by the Union, "dissatisfied with the results of the bargained-for grievance procedure" (Res. Br. 11), to "disregard the exclusivity" of that procedure (Res. Br. 10).

To be sure, where the parties to a collective bargaining agreement do provide that a non-judicial contract dispute procedure is to be exclusive, that procedure may not be disregarded by a party dissatisfied with its results. But Respondent's insistence on that commonplace has absolutely no relevance for the question presented here: whether the parties to *these* contracts created an exclusive contract dispute procedure by permitting—but not requiring—the Union to strike and the Company to lockout over unresolved grievances and remaining silent about the alternative of judicial enforcement. And, as we demonstrated in our opening brief, the policy of promoting labor peace by making labor contracts binding and enforceable through the usual processes of the law that animates § 301 of the Labor Management Relations Act plainly requires that such a contract be read as providing only for economic force only if that is the only possible reading. (Petitioners' Brief, pp. 9-12.) As the Seventh Circuit stated in the leading court of appeals case:

> [I]t is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction. . . . There is no plain language in the contract compelling parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than this. [*Associated General Contr. of Ill. v. Illinois Conf. of Teamsters*, 486 F.2d 972, 976 (7th Cir. 1973).]

C. Respondent points out that "[i]n enacting § 301, Congress expressed its belief that industrial peace could

be achieved only if the parties were held to the terms of the agreements into which they entered." (Res. Br. 8-9.) So far so good. Respondent, as well as the Chamber and the Motor Vehicle Manufacturers Association (MVMA), then seek to draw from that statement the conclusion that the purpose of § 301 is limited to "insur-[ing] that the parties abide by their promised means of [non-judicial] adjustment." (Res. Br. 11.) This is a patent non-sequitur.[1]

It is well-settled that § 301 is *not* limited to enforcing the parties' obligations with respect to their "promised means of [non-judicial] adjustment." Instead, § 301 is plainly intended to make enforceable *all* of the promises contained in a collective bargaining agreement and to embody the "strong policy favoring judicial enforcement of collective bargaining contracts." *Hines v. Anchor Motor Freight*, 424 U.S. 554, 562 (1976). When a labor contract does not provide for an exclusive, peaceful non-judicial method of resolving contract disputes, this Court has therefore been quick to provide direct judicial enforcement of the contract's substantive provisions as required by § 301. *Smith v. Evening News*, 371 U.S. 195 (1962); *Atkinson v. Sinclair Rfg. Co.*, 370 U.S. 238 (1962).

D. Respondent seeks to attribute to us the argument that strikes are an "improper method of achieving dispute resolution" and then spends several pages of its brief "responding" to that argument. (Res. Br. 20.) We make no such argument. Rather, we argue that—because of the language and policies of § 301—a bare provision in a collective bargaining agreement preserving the strike option should *not* be regarded as evidence of an intent to foreclose the judicial enforcement of labor contracts provided for in § 301.

---

[1] As shown in point I.A. above, Respondent's argument, moreover, rests on the contrary-to-fact assumption that the parties here agreed that economic force would be the exclusive means of resolving contract disputes.

We argue, in other words, that because of the important federal policy favoring labor peace during the term of a collective bargaining agreement, and because strikes and lockouts do not resolve contract interpretation disputes by reference to the language and meaning of the contract, the presence of the strike option should not be regarded as the parties' chosen *exclusive* method for resolving such disputes *in the absence of explicit contract language to that effect.* (*See* Pet. Br. 8-9.)[2]

E. Respondent relies on a single sentence from *Republic Steel v. Maddox*, 379 U.S. 650 (1965) for the proposition that "the *Maddox* court held that the dispute resolution process *is* exclusive unless the parties expressly agree that it is *not*." (Res. Br. 15, emphasis added.) The collective bargaining agreement in *Maddox* provided for the final and binding arbitration of contract grievances and the *Maddox* Court held that *such a provision* creates the exclusive method of settling contract disputes. 379 U.S. at 651-653. Against that background, the sentence in question states, "The federal rule would not of course preclude Maddox' court suit if the parties to the collective bargaining agreement expressly agreed that arbitration was not the exclusive remedy." *Id.* at 657-658.

---

[2] We also demonstrated in our opening brief that LMRA § 203(d) is not intended to override § 301 but rather to reinforce the latter's preference for the peaceful settlement of contract disputes. (Pet. Br. 12-15.) In reply, Respondent argues that "[i]n terms of negotiated agreements, the national labor policy is embodied in § 203(d) *rather than* § 301." (Rep. Br. 26, emphasis added.)

Nothing in the LMRA's language or in its legislative history justifies that attempt to denigrate the central place of § 301 in the national labor policy. And Respondent offers no reply to our showing that both the statutory language—particularly the use of the term "adjustment"—and the general rule that a statute should be read as an integral whole make it plain that § 203(d) is *not* to be read as stating any preference for the use of economic force during contract disputes.

Not surprisingly given the context, neither that nor any other sentence of the *Maddox* opinion addresses—much less decides—a situation such as the one here where the collective bargaining agreement does *not* state any "express agreement" that either arbitration—or economic force—is the "exclusive remedy" for contract disputes. Instead, *Maddox* establishes two simple rules: if the parties state that a private contract dispute settlement procedure is exclusive, it is; and if they say it is not, it is not. Contrary to Respondent's claim, *Maddox* does not deal even in passing with the rules that apply where the contract is silent in this regard.[3]

F. Starting from their misreading of *Maddox*, Respondent, as well as the MVMA, assert that the question here is whether to create an "exception" to the "usual rules" that grievance procedures should be regarded as exclusive whether or not the parties expressly so state. (*See* Res. Br. 14; MVMA Br. 5.) This is to reverse the rule and the exception. As *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 454 (1957), holds, § 301's general rule is that "the collective agreement" is to be recognized as a "valid, binding and enforceable contract."

To the extent there is an "exception", then, it is the judicially-created exception that—when the parties agree that the meaning of their labor contract will be determined, not by the judiciary, but instead by a private decision-maker—their agreement will be honored and the courts will decline to substitute their judgment for that

[3] As we have demonstrated, § 301's goal of promoting labor peace through binding and enforceable labor contracts is not served by construing a contract which is less than clear as one that makes the use of economic force the exclusive means for resolving a contract dispute. (Pet. Br. 8-15). In contrast, a labor contract, such as the one at issue in *Maddox*, providing for binding decisions on the merits of contract disputes by a private decision-maker, *does* serve those policies. It may therefore be perfectly sound in that context to take contractual silence on the availability of a judicial forum as manifesting an intent to make the private forum exclusive.

of the appointed decision-maker. That being so, the instant case can fairly be said to turn on whether that exception to § 301's general rule of judicial enforcement of collective bargaining agreements will be extended to preclude resort to court when the parties do *not* appoint a private decision-maker to review the merits of their contract disputes but instead permit the use of economic force and are silent regarding the availability of judicial enforcement. For all the reasons stated in our opening brief we submit that the correct answer to that question is "no".

II. A. The MVMA's *amicus curiae* brief, unlike Respondent's brief, is not content to pretend that the collective bargaining agreements here state that strikes and lockouts are the exclusive method of resolving contract disputes. Instead, the MVMA spends the bulk of its brief discussing another kind of collective bargaining agreement: *viz.*, contracts that contain a standard form "final and binding" arbitration clause while specifically excluding a limited number of issues from its reach and that do not specify whether those excluded disputes are subject to resolution *solely* through economic force. (MVMA Br. 10-18.) According to the MVMA, when the parties provide for arbitration and then "carve out" one or more issues from the reach of the arbitration clause, the appropriate conclusion to draw is that the parties believed that the *issues so excluded from arbitration* are either "too subtle" or "so delicate" to be entrusted to any adjudicative body, and that disputes over those issues are not to be settled by the courts. (MVMA Br. 17.)

This argument may have some force in the context of collective bargaining agreements such as those described by MVMA. But whatever force the argument may have in that context comes from the very difference between those contracts and the contracts at issue here, *viz.*, the fact that some "subtle" or "delicate" contract issues *were* treated specially and the inference that may fairly

be drawn from that special treatment. The collective bargaining agreements here are not of that kind and do not provide a basis for drawing any such inference.[4]

Instead—as to both their "subtle" and the not-so-subtle provisions—the collective bargaining agreements at issue here reserve the right to strike and are silent on judicial enforcement. It simply makes no sense to infer from such a contract that the parties made a considered choice *not* to entrust issues as basic and as readily-determinable as wage rates, vacation eligibility and application of the "just cause" clause to any adjudicative body. To do so would relegate *all* of the substantive provisions of the contract to determination on the basis of the relative economic strength of the parties rather than on the basis of the language and meaning of the contract.[5]

---

[4] Contrary to the impression left by Respondent and the MVMA, Professor Feller's *A General Theory of the Collective Bargaining Agreement*, 61 Calif.L.Rev. 663, 849 (1973), carefully distinguishes in this respect between labor contracts that have exceptions to a mandatory arbitration provision and contracts that have no mandatory arbitration provision at all. Professor Feller, in fact, acknowledges that the most appropriate result may be "to adopt different solutions for the different types of agreements." (*Id.* at 849.) Under this "possible answer" (*id.*), if an agreement "does not provide for arbitration at all, or provides it only for a narrow class of cases, thus providing no system for internal adjudication of ascertainable standards . . . a judicial remedy would be provided after the grievance procedure has been exhausted" (*id.* at 850).

[5] MVMA also invokes the possibility that under our approach a probationary employee could bring a lawsuit challenging his or her discharge even though such a discharge is not subject to the grievance procedure. (MVMA Br. 10.) But, probationary employees do not have the substantive contractual protection from unjust discharge enjoyed by regular employees; that is the meaning of being "probationary". That being so, the validity of such a claim has nothing to do with which means of resolving a dispute—arbitral, judicial or economic recourse—is available. The point is that probationary employees have no substantive right to enforce in *any* such forum.

B. Respondent and the MVMA place great reliance on the law review article just noted: Feller, *A General Theory of the Collective Bargaining Agreement*, *supra*. That is a tacit admission of how firmly the well-settled § 301 law as declared by this Court stands against their position. While Professor Feller has essayed a bold and fascinating methodology for elaborating § 301, his methodology is at war with this Court's methodology.

For example, Professor Feller's "Proposition 1" advances the thesis that the "collective agreement is not a contract between the employer and any employee and neither may bring suit against the other for its breach." 61 Calif.L.Rev. at 774. As Professor Feller admits, that proposition is contrary to the holdings of *Smith v. Evening News*, *supra*, and *Humphrey v. Moore*, 375 U.S. 335 (1964). 61 Calif.L.Rev. at 843-845. And Professor Feller's "Proposition 2" is that "the contractual obligations assumed by the employer are limited to those enforceable through the grievance procedure." *Id.* at 792. That proposition is contrary to *Smith v. Evening News*, *supra*, and *Atkinson v. Sinclair Rfg. Co.*, *supra*.[6]

In sum, Respondent and the MVMA would have it that in the interest of ruling that the collective bargaining agreements here are *not* judicially enforceable, this Court should rewrite its basic § 301 jurisprudence from *Textile*

---

[6] Not only do Professor Feller's theories require a complete departure from established precedent, his conclusions regarding the type of labor contract at issue here also rest on the naked assumption that the parties "implicitly" intended to foreclose judicial relief. 61 Calif. L. Rev. at 843. Professor Feller cites no supporting empirical evidence for this assumption and there is no reason to believe that his long and distinguished service with the United Steelworkers of America afforded him any particular expertise on the question of whether parties to the type of labor contract at issue "implicitly" intended to negate judicial enforcement. Not a single reported case involving such a contract involves the Steelworkers Union and it may therefore be fairly assumed that the Steelworkers, for whatever reason, have not entered into such agreements with any regularity.

Workers v. Lincoln Mills, supra, to date. We suggest that this modest proposal serves only to betray the weakness of their legal position.

C. Both the MVMA and the Chamber recite various statistics designed to suggest that allowing judicial enforcement of the type of labor contract at issue here would cause a flood of litigation. That suggestion is baseless.

Two circuits have held that contracts of this type may be enforced in court and neither the MVMA nor the Chamber point to any increase of contract enforcement litigation in those circuits. *See Associated General Contr. of Ill. v. Illinois Conf. of Teamsters, supra*; *Dickeson v. DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987).[7]

Not surprisingly, then, the statistics used are overinclusive in several fundamental ways. The Chamber, for example, recites that there were 13,328 suits filed "under federal labor laws" in 1989. (Chamber Br. 10 n.18.) What the Chamber fails to point out is that this figure includes several categories of "labor litigation" having nothing to do with the enforcement of labor contracts.[8]

---

[7] In the 17 years since the Seventh Circuit decided *Associated General Contr. of Ill. v. Illinois Conf. of Teamsters, supra,* there have been only two reported court of appeals decisions raising the question presented here and not a single reported district court opinion in the 3 states that circuit court covers. *S. J. Groves & Sons v. Teamsters,* 581 F.2d 1241 (7th Cir. 1978) and *Huffman v. Westinghouse,* 752 F.2d 1221 (7th Cir. 1985). In the three years since the Ninth Circuit decided *Dickeson,* there is not a single reported decision in the 9 states that circuit court covers.

[8] That figure includes suits under the Fair Labor Standards Act, Railway Labor Act, Landrum-Griffin Act and a category called "other labor litigation" (presumably including ERISA, OSHA, etc.). Indeed, the number of cases brought under the Labor Management Relations Act (which includes § 301) has declined by nearly 30% since 1986. *Report of the Administration Office of the U.S. Courts on Civil Cases Commenced by Nature of Suit,* Table C-2A (1989).

The statistic recited by the MVMA are misleading because those figures lump together labor contracts which exclude only a few items from arbitration and those which —like the contracts at issue here—contain no arbitral mechanism at all. For example, the MVMA notes that, according to one sample, 31% of labor contracts *either* do not provide for arbitration or limit the reach of the arbitration clause in some respect. (MVMA Br. 11.) In arguing that contract enforcement here may lead to "thousands" of potential § 301 suits, the MVMA, however, admits that it cannot be determined how many grievances are filed under labor contracts such as those at issue here and how many under contracts which exclude only certain issues from arbitration. (MVMA Br. 22.)

CONCLUSION

For the reasons stated in the Petitioners' opening brief and in this reply brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

JORDAN ROSSEN
DANIEL W. SHERRICK
8000 East Jefferson
Detroit, Michigan 48214

WILLIAM M. MAZEY
4000 Town Center
Suite 740
Southfield, Michigan 48075

LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390
Attorneys for Petitioners

GEORGE KAUFMANN
2101 L Street, N.W.
Washington, D.C. 20037
Of Counsel